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Crl.O.P.(MD)No.10878 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD)No.10878 of 2023

Thamotharan

... Petitioner/Accused

Vs.

The State,
Rep. by The Sub Inspector of Police,
Surandai Police Station,
Tenkasi District.

... Respondent/Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to set aside the order passed in Crl.R.C. No. 10 of 2022 on the file of the Additional District and Sessions Judge, (FTC), Tenkasi dated 25.04.2023 by confirming order in Crl.M.P. No. 1853 of 2021 on the file of the learned Judicial Magistrate, Alangulam dated 05.10.2021 and consequently direct to recall the witnesses P.W.1 to P.W.4 for cross examination.

For Petitioner : Mr.S.Vishnuvardhan

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



ORDER

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This criminal original petition has been filed to set aside the order passed in CrI.R.C. No. 10 of 2022 on the file of the Additional District and Sessions Judge, (FTC), Tenkasi, dated 25.04.2023, by confirming order in CrI.M.P. No. 1853 of 2021, on the file of the learned Judicial Magistrate, Alangulam, dated 05.10.2021 and consequently direct to recall the witnesses P.W.1 to P.W.4 for cross examination.

2.The petitioner has filed a petition under Section 311 Cr.P.C. before the trial Court to recall the witnesses PW1 to PW4 for cross examination. That petition was allowed on condition upon the petitioner to pay a sum of Rs.3,000/- to the District Legal Service Authorities. The above said orders to be complied on or before 27.10.2021. But, it could not be complied by the petitioner. So it was automatically get dismissed. Against which, revision has been preferred by the petitioner, before the Additional District Judge, Tenkasi. That was also dismissed. Against which, this criminal original petition has been filed.

3.Even though a simple issue has not been taken on note by the petitioner in complying the above said condition, considering the fact that the petitioner is facing trial for the offence punishable under Section



435 of IPC, which heinous in nature, unless cross examination, fair justice may not be possible. On that sole ground even though maintainability is under question, to give one more opportunity, this Court is inclined to pass following orders.

1) As already directed by the trial Court, let the above said amount be deposited by the petitioner before the concerned District Legal Services Authority, within a period of one week from the date of receipt of a copy of this order.

2) On such deposit, the trial Court is directed to recall the witness P.W.1 to P.W.4 for cross examination by fixing a particular date. On that date, the petitioner must cross examine the witness without fail. If any failure is noticed, then the further right to cross examine the witness will be forfeited.

4. With the above said directions, this criminal original petition is disposed of.

20.06.2023

Index : Yes/No
Internet : Yes/No
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- 1.The Additional District and Sessions Judge, Tenkasi.
- 2.The Judicial Magistrate, Alangulam.
- 3.The Sub Inspector of Police,
Surandai Police Station, Tenkasi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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